

REMARKS

The Office Action has objected to Claim 40, but has indicated that it is allowable if rewritten in independent form. However, it has rejected Claims 27-28 under 35 U.S.C. §112, first paragraph for allegedly being non-enabling. In addition, it has rejected Claims 37 and 39 under 35 U.S.C. §112, second paragraph for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Further, Claims 22, 26, 35-39 and 41 are rejected under 35 U.S.C. §102(b) as defining subject matter which is allegedly anticipated by the teachings in an article by Malesani et al., Atti - Istituto Veneto di Scienze, Lettere ed Arti, Classe de Scienze Matematiche e Naturali, 1973, 131, 9-16 ("Malesani et al."). Finally, the Office Action has rejected Claims 22, 26-28, 35-39 and 41-43 on the ground of non-statutory obviousness type double patenting as allegedly being unpatentable over Claim 1 of U.S. Patent Publication Application No. 2008/0119470.

Applicants have amended the claims, which when considered with the following remarks, are deemed to place the present application in condition for allowance. Favorable action is respectfully requested.

Before addressing the merits of the rejection, Applicants wish to thank Examiner Murray for the courtesy exhibited to Applicants representative during a telephonic interview conducted on August 5, 2009 and for his helpful suggestions which were offered to their representative for advancing the application.

During the interview, it was pointed out that the Supplemental Amendment which was filed on June 24, 2009 has not been initially reviewed prior to the issuance of the present Office Action. After Examiner Murray reviewed the claims that were filed in the Supplemental Amendment, Examiner Murray agreed to withdraw the rejections of Claims 37 and 39 under

35 U.S.C. §112, second paragraph and the rejection of Claims 22, 26, 25-29 and 41 under 35 U.S.C. §102 (b). Examiner Murray indicated that Applicants need not discuss these issues and rejections in the Response to the latest Office Action. Examiner Murray also indicated that if Applicants cancel Claims 27 and 28, then he would also withdraw the obviousness double-patenting rejection without the necessity for Applicants to file a terminal disclaimer because the present application was filed prior to the filing of U.S. Patent Publication Application No. 2008/0119470.

In addition, Examiner Murray reiterated the comments in the March 18 interview that if Applicants cancel the withdrawn subject matter regardless of the action of the USPTO, any divisional application filed will have the '121 protection.

Claims 27 and 28 have been cancelled without prejudice, and thus the rejections thereof has been rendered moot. Applicants cancellation of the claims do no signify that Applicants agree that the subject matter therein is non-enabling. Applicants reserve the right to file a continuation application directed thereto. Moreover, it is to be understood that the claims currently pending encompass the presence of the compound in Formula Ia in a pharmaceutical or veterinary composition.

Further, Applicants have cancelled the non-elected subject matter, which were withdrawn as a result of the restriction requirement. Applicants have not abandoned the subject matter therein, and as indicated in the telephone interview, even if the USPTO withdraws the restriction requirement, the divisional application containing the withdrawn rejection would still have '121 protection.

Further, Applicants have amended Claim 39 to correct a grammatical error.

No new matter is added to the application.

As indicated hereinabove, current Claims 37 and 39, as amended in the Supplemental Amendment, do not suffer from the ambiguity that was alleged with respect to Claims 37 and 39 that were filed in the Response dated April 13, 2009. Thus, this rejection is moot in view of the Supplemental Amendment, and as indicated in the Interview Summary, this rejection has been withdrawn.

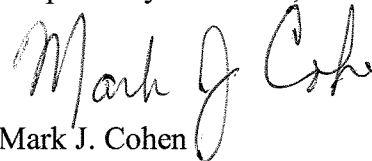
Furthermore, as indicated in the Interview Summary, the rejection of Claims 22, 26, 35-30 and 41 under 35 U.S.C. §102(b) has been withdrawn.

Finally, as indicated in the Interview Summary, the obviousness double patenting rejection has been withdrawn in view of the cancellation of Claims 27 and 28.

Thus, all of the rejections have been overcome. Claim 40 is thus no longer dependent on a non-allowed claim. Consequently, the objection thereto has been overcome; withdrawal thereof is respectfully requested.

Thus, in view of the Amendments to the claims and the Remarks herein, the present application is in condition for allowance, which action is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink that reads "Mark J. Cohen". The signature is written in a cursive, flowing style.

Mark J. Cohen
Registration No. 32,211

SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
516-742-4343 - Telephone
516-742-4366 - Fax

MJC/ech